

Message

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**From:** Laycock, Kelly [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EDF53496C8284A7D8153E0F312818DF1-LAYCOCK, KELLY]  
**Sent:** 12/3/2020 2:04:37 PM  
**To:** McGill, Thomas [Mcgill.Thomas@epa.gov]  
**CC:** Calli, Rosemary [Calli.Rosemary@epa.gov]  
**Subject:** FW: Code 15 Mitigation - Simma addressed Matt's outstanding comment

<!--[if lte mso 15 || CheckWebRef]-->

Laycock, Kelly has shared a OneDrive for Business file with you. To view it, click the link below.

 Code 15 Mitigation FL Assumption EDITED.docx

<!--[endif]-->

Tom,

Code 15 is now ready for your review, it's already been reviewed by Mita.

Kelly Laycock  
Wetlands Regulatory Section  
U.S. Environmental Protection Agency  
61 Forsyth St.  
Atlanta GA, 30303  
phone 404 562 9132

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**From:** Kupchan, Simma <Kupchan.Simma@epa.gov>  
**Sent:** Thursday, December 3, 2020 9:00 AM  
**To:** Ghosh, Mita <Ghosh.Mita@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>  
**Subject:** RE: Code 15 Mitigation - Simma addressed Matt's outstanding comment

Thanks!

Simma Kupchan  
EPA Office of General Counsel  
Water Law Office  
WJC North Building # 7426Q  
202-564-3105

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**From:** Ghosh, Mita <Ghosh.Mita@epa.gov>  
**Sent:** Thursday, December 3, 2020 8:13 AM  
**To:** Kupchan, Simma <Kupchan.Simma@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>  
**Subject:** RE: Code 15 Mitigation - Simma addressed Matt's outstanding comment

Thanks Simma, the response looks good!

Mita Ghosh  
Chief, Water Law Office  
Office of Regional Counsel

United States Environmental Protection  
Region 4  
404-562-9568

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**From:** Kupchan, Simma <Kupchan.Simma@epa.gov>  
**Sent:** Wednesday, December 2, 2020 11:53 PM  
**To:** Ghosh, Mita <Ghosh.Mita@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>  
**Subject:** RE: Code 15 Mitigation - Simma addressed Matt's outstanding comment

Mita,

It looks like you reviewed Code 15 for ORC, except for the new response below which I've added. I am pasting below for your reference. I think it's otherwise fully reviewed.

**Permits issued by the state are subject to administrative challenge, which potentially leads to delays**

Commenters noted that because the state Section 404 permit program and the Section 404(b)(1) guidelines do not align, any administrative challenge to a state Section 404 program permit would be adjudicated under Florida law, which could result in a permit denial or modification of the MBI. One commenter pointed out that state Section 404 permits will be subject to challenge by affected parties under Florida's Administrative Procedures Act and provided examples of how such challenges have effectively delayed state mitigation bank permits through "legal maneuvering." To prevent such denial or modification of the MBI due to differences between the state and federal program, the commenter requested that the Corps retain permitting authority for all the federal mitigation banks it authorizes.

**Agency Response**

# Ex. 5 Deliberative Process (DP)

Simma Kupchan  
EPA Office of General Counsel  
Water Law Office  
WJC North Building # 7426Q  
202-564-3105

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**From:** Kupchan, Simma  
**Sent:** Wednesday, December 2, 2020 11:49 PM  
**To:** Calli, Rosemary <[Calli.Rosemary@epa.gov](mailto:Calli.Rosemary@epa.gov)>; Creswell, Michael <[Creswell.Michael@epa.gov](mailto:Creswell.Michael@epa.gov)>; Hurlid, Kathy <[Hurlid.Kathy@epa.gov](mailto:Hurlid.Kathy@epa.gov)>  
**Cc:** Laycock, Kelly <[Laycock.Kelly@epa.gov](mailto:Laycock.Kelly@epa.gov)>; Hicks, Matt <[Hicks.Matthew@epa.gov](mailto:Hicks.Matthew@epa.gov)>  
**Subject:** Code 15 Mitigation - Simma addressed Matt's outstanding comment

I think this was otherwise completed and so is ready for the next step in review.

Simma Kupchan  
EPA Office of General Counsel  
Water Law Office  
WJC North Building # 7426Q  
202-564-3105

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**From:** Calli, Rosemary <[Calli.Rosemary@epa.gov](mailto:Calli.Rosemary@epa.gov)>  
**Sent:** Wednesday, December 2, 2020 9:58 PM  
**To:** Creswell, Michael <[Creswell.Michael@epa.gov](mailto:Creswell.Michael@epa.gov)>; Hurlid, Kathy <[Hurlid.Kathy@epa.gov](mailto:Hurlid.Kathy@epa.gov)>; Kupchan, Simma <[Kupchan.Simma@epa.gov](mailto:Kupchan.Simma@epa.gov)>  
**Cc:** Laycock, Kelly <[Laycock.Kelly@epa.gov](mailto:Laycock.Kelly@epa.gov)>; Hicks, Matt <[Hicks.Matthew@epa.gov](mailto:Hicks.Matthew@epa.gov)>  
**Subject:** Code 9 (NEPA) status - Rosemary is done

I've finished wrapping up the Code 9 summary written by Matt. There are two placeholders for adding information - Simma and Kathy, please feel free to just add where Matt flagged for you, or email info to be woven in. Once you've done that, please just email this cc group so Michael can review when ready.

# Ex. 6 Personal Privacy (PP)

~ Rosemary

Rosemary (Hall) Calli  
Section Chief, Wetlands & Streams Regulatory Section  
Aquatic Ecotoxicologist  
U.S. Environmental Protection Agency, Region IV  
  
404.562.9846  
[Calli.Rosemary@epa.gov](mailto:Calli.Rosemary@epa.gov)